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No. 85-653

In the Supreme Court of the United States

October Term, 1985

CITY OF CLEVELAND HEIGHTS, *et al.*,
Petitioners,

vs.

WILLIAM H. SMITH,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT WILLIAM H. SMITH IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. STATEMENT OF THE CASE

Respondent, William H. Smith ("Respondent" or "Mr. Smith"), a black resident of the City of Cleveland Heights, instituted this action on September 12, 1980, on behalf of himself and all black residents of Cleveland Heights, against the City of Cleveland Heights ("CH" or the "City"), the Heights Community Congress ("HCC") and

certain divisions and officers of each, alleging that they have engaged in conduct with the purpose, intent and effect of violating Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3604 (hereinafter the "Fair Housing Act"), the Civil Rights Act of 1866, 42 U.S.C. §§1981, 1982, and 1983 and the Thirteenth and Fourteenth Amendments to the United States Constitution. Respondent claims that Petitioners have enacted and administered housing legislation, programs and policies with a racially discriminatory *motive* and that their actions have had the racially discriminatory *effect* of preventing the movement of blacks into CH, while openly and admittedly soliciting the movement of whites into CH.

Petitioners filed motions to dismiss, or alternatively for summary judgment, in April, 1983, challenging Respondent's standing to bring this action, which were granted by the district court on December 22, 1983. The court found that Respondent had failed to demonstrate that he had personally suffered some actual or threatened injury as a result of the putatively illegal conduct of the Petitioners. The United States Court of Appeals for the Sixth Circuit reversed the district court's decision on May 3, 1985. The court of appeals found that:

> the source of his injury is a local government policy tailored expressly to shape the racial composition of his community. The situs is the very community in which he lives. These direct and concrete connections demonstrate that Smith's injury is peculiar to himself or to a distinct group of which he is a part, *Gladstone Realtors v. Village of Bellwood,* 441 U.S. 91, 100 (1979), and that he is personally subject to the challenged discrimination. *Allen* [*v. Wright*], 104 S. Ct. at 3327.

The factual background out of which this litigation arises was begun when the Cleveland Heights City Council passed Resolution No. 26-1976 on March 15, 1976, creating a comprehensive housing program designed to regulate and maintain the racial composition of the City.[1] The intent of this statutorily created housing program is to encourage whites to find housing within CH and blacks to find housing outside of CH. Resolution No. 26-1976, as amended, specifically provides as follows:

> [*I*]*t is essential to continue to attract white homeseekers of all ages, but particularly young families with children who wish to explore the advantages of living in Cleveland Heights.* It is equally essential that Cleveland Heights continue its commitment to area-wide open housing to *assure that minority prospects be offered opportunities to explore a wide range of locational choices through the efforts of the City in cooperation with County-wide fair housing programs.*

Petitioners' comprehensive housing scheme is administered through several programs and policies implemented

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1. Resolution No. 26-1976 was amended on November 19, 1979. Likewise, Respondent's complaint challenges other ordinances which CH has enacted and which have become part of this comprehensive housing program. Although Petitioners state in a footnote for the first time that Mr. Smith's appeal before the Sixth Circuit Court of Appeals was directed solely to his standing to challenge Resolution No. 26-1976, as amended, Respondent has challenged the entirety of Petitioners' conduct in controlling the housing market in Cleveland Heights. The issue of whether the other ordinances challenged by Respondent, including Ordinance No. 27-1976 and amendments thereto by Nos. 16-1983, 49-1977 and 69-1977 are discriminatory is properly a question left for the prosecution of the merits of the case. Neither the district court nor the court of appeals decisions have limited the question of Mr. Smith's standing to Ordinance No. 26-1976, as amended.

by CH's Community and Public Relations Department under the direction of Commissioner Lawrence J. Mattes. The following housing programs are administered through these divisions: Heights Housing Service ("HHS"), Preferred Realty Office ("PRO"), Public Advertising of Housing Opportunities in CH, and Promotion and Advertising of PRO brokers (Mattes Depo. at 3-10, 31-33, 43-45, 63-65).

HHS is a service provided to potential home seekers and home buyers in CH, providing escorted tours, referrals to approved real estate brokers and agents and advertising services for PRO brokers and agents (Mattes Depo. at 9 and 16; Deposition of City Manager Robinson at 45). All blacks (but only blacks) who come to HHS for information or service are referred to the Cuyahoga Plan[2] (Mattes Depo. at 16). No whites are referred to the Cuyahoga Plan (Mattes Depo. at 43-44).

The PRO program exists pursuant to a contractual arrangement between CH and selected real estate brokers and agents who have agreed to comply with and promote the City's "affirmative marketing programs."[3] CH provides PRO brokers with educational programs about the city and promotes PRO brokers in real estate advertise-

---

2. The Cuyahoga Plan is a county-wide housing service provided to home seekers within Cuyahoga County, Ohio. The Cuyahoga Plan escorts the black home seekers referred to it by Cleveland Heights into areas throughout the metropolitan Cleveland area thereby decreasing the likelihood that the black home seeker will eventually purchase a home in CH.

3. For purposes of clarity, Respondent will use CH's terminology in referring to the challenged housing legislation, programs and policies as an "affirmative marketing plan" even though Mr. Smith denies that they constitute such a plan. The challenged legislation, programs and policies were not enacted to address identified past discrimination against blacks within CH.

ments, "Heights Happenings" newsletters, "Info-Paks" about CH and other outlets (Mattes Depo. at 69-73). In exchange, PRO brokers and agents agree to assure that white buyers will be given the opportunity to view properties in CH and that black buyers will have an opportunity to see homes throughout the metropolitan area (Mattes Depo. at 43).

Moreover, to become a PRO broker or agent, and in order to maintain PRO status, each real estate broker and its agents must demonstrate on a yearly basis that it is complying with CH's "affirmative marketing" program. Each PRO broker or applicant must submit documentary evidence that its office has caused real estate to be sold to *white buyers in CH* and/or to *black buyers outside of CH* in a quantity equal to the number of licensed agents in the broker's office or twenty-five, whichever is less (Mattes Depo. at 70-73). Recognizing the advantages of being a PRO broker, City Manager Robinson readily admitted that "there is a likelihood that the PRO broker would sell a house [in Cleveland Heights] to the white buyer as opposed to the black buyer, all things equal." (Robinson Depo. at 51).

CH's public advertising of housing opportunities within the City promotes CH throughout the Greater Cleveland area and within the State of Ohio as a "great" place to live (Mattes Depo. at 12). However, these advertising and promotional programs are targeted only to attract whites to CH (Mattes Depo. at 21). In fact, Commissioner Mattes admits that it is a policy of CH to attract potential white home seekers, especially young white families (Mattes Depo. at 21). Further, City Manager Robinson admits that CH's marketing strategy mirrors the purpose of Resolution 26-1976, as amended (Robinson Depo. at 21).

Evidence from the Petitioners also establishes that the intent and effect of CH's comprehensive housing programs is to maintain the City's white majority and black minority. To perpetuate this racial composition, Petitioners have felt compelled to enact and operate programs which discourage the movement of blacks into the community while at the same time actively encouraging the movement of whites into the community. City Manager Robinson, in conceding the success of the City's effort in manipulating the racial makeup of CH, attempted to justify the City's effort in the following testimony:

> A. Unfortunately, we have not seen, in the United States, a pattern of where different races live together in the same city in harmony. So that people have tended to believe, whether right or wrong, that housing values or property values decline if a community is racially integrated. And that was the concern to residents of the community and as I understand it at that time, while I was not directly involved in it, it was the concern of the City Council and to the operation of the city government. (Robinson Depo. at 35.)
>
> * * * * *
>
> Q. You would like to think the reason why that racial composition has been maintained is because of the comprehensive real estate program?
>
> A. Yes.
>
> * * * * *
>
> Q. Is that program [real estate program] established to affect the racial make-up of the city?
>
> A. If by "affect" you mean to maintain it as an integrated community, yes. If you mean to set goals or percentages of how many of what color will

live here, the answer is no. (Robinson Depo. at 43, 70.)

* * * * *

Q. Okay. Now in administering the comprehensive real estate program, does the city make an effort to determine or break down the city in terms of less integrated and more integrated neighborhoods?

A. No. Not to my knowledge, no. The city has always treated the integrative process as a city-wide process. I can't speak for past managers, but the time I've been here, it has been a community-wide process. Not a neighborhood process or a school district process, but that of a city-wide.

We have had community busing for the schools for years. I mean, with kids going to different schools, with only one high school. Everybody is feeding into the same system from the same schools, so we've treated it as a community process. (Robinson Depo. at 73.)

City Commissioner Mattes also testified that CH openly prefers white residents to black residents. In his deposition on February 24, 1983, Mr. Mattes testified as follows:

Q. Can you tell me if you attempt to attract minorities and specifically blacks to the housing service?

A. What do you mean by attract?

Q. Well, in terms of selling the City of Cleveland Heights as a favorable place to live, do you actively solicit black home seekers to come to Cleveland Heights and purchase homes in Cleveland Heights?

A. The answer to that would be no, that we do not specifically tailor or market communications to black minorities.

Q. Do you tailor your advertising and promotional program to whites?

A. Generally speaking, yes.

Q. So that it's a policy of the City of Cleveland Heights to attract whites as potential home seekers; is that right?

A. Yes, that is correct.

Q. And particularly, the city is attempting to attract young, white families? Is that correct?

A. Yes, that's correct.

Q. That's what the advertisement and promotional programs of the city are directed at?

A. Yes, that's true. (Mattes Depo. at 20-21.)

Within the context of CH's open preferences for whites and not blacks, Mr. Smith testified that he has been injured by the intent, effect and stigma of denying blacks the same opportunity to exercise their right to choose freely to live in CH, without government intervention and prevention, as is given to whites. In his deposition taken on October 30, 1980, Respondent described the stigmatic injury which affects his daily life.

Q. So, as far as you are concerned, you did not have any evidence to tell me that what you say are discriminatory programs are being effective; is that correct?

MR. BURTCH: Objection. Repetitive.

A. No. I am saying that the mere fact that you are suggesting that they [blacks] move somewhere else harms me as a black living here simply by

> suggesting that they [blacks] are not wanted here. Your program and the attempt has been successful. (Smith Depo. at 54.)

Mr. Smith further stated in his deposition taken on February 24, 1983, that he was "stigmatized" based on CH's open preferences for whites:

> Q. Have you, yourself, to the best of your knowledge, ever been denied a right to interact and associate on a social and professional basis with black persons, other black persons because of any action, policy, legislation whatsoever of the City of Cleveland Heights?
>
> A. No, but we—
>
> Q. What is your answer?
>
> A. No, but we interact with the stigmas that have been created by the City of Cleveland Heights.
>
> Q. Or at least your perception that such stigmas exist, is that right?
>
> A. Well, it's not a perception at all. (Smith Depo. at 79-80.)

Mr. Smith's testimony is that the stigma of this preference constitutes an actual *and* threatened injury to the quality of his daily life because the Petitioners have publicly stated that he and other members of his race are less-preferred than white residents of CH. Moreover, CH's attempt to maintain the racial composition of CH causes daily injury to Respondent because it denies and threatens to deny him the opportunity to enjoy social, professional and political association with members of his own race. Unquestionably, CH's manipulation of the City's racial composition prevents blacks from ever achieving a social or political majority within CH.

II. SUMMARY OF ARGUMENT

Petitioners argue that Mr. Smith does not have standing in this case because he has not been prevented from obtaining housing as a result of the challenged unlawful conduct based on one sentence, taken out of context, contained in *Allen v. Wright,* 104 S. Ct. 3315 (1984), and purportedly supported by *Heckler v. Mathews,* 465 U.S. 728 (1984), and *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464 (1982), that "a plaintiff must have personally been denied equal treatment by the challenged discriminatory conduct." Petitioners ignore that the cases they cite do not involve challenges to discriminatory housing practices. Petitioners, likewise, do not discuss the leading cases articulating the standing requirements to challenge housing discrimination.

Mr. Smith has alleged two injuries which he has incurred as a result of Petitioners' preference for white rather than black homeowners in CH: (1) he has been stigmatized as a member of an inferior class of people, and (2) he has been denied and threatened with denial of important social and professional relationships with other blacks. Contrary to Petitioners' argument, to establish standing based on either of these injuries, it is not necessary for Mr. Smith to demonstrate that he has been denied housing opportunities in CH. The decisions of this Court in *Havens Realty Corp. v. Coleman,* 455 U.S. 363 (1982), *Gladstone Realtors v. Village of Bellwood,* 441 U.S. 91 (1979) and *Trafficante v. Metropolitan Life Insurance Company,* 409 U.S. 205 (1972) all held that the "personal injury" requirement of standing can be satisfied short of proof that the plaintiff has been denied housing opportunities; the

plaintiff need only establish a judicially cognizable injury that is directly traceable to the challenged conduct. This Court has long recognized that stigmatic injury resulting from racial discrimination, and the denial of association opportunities to those who are not direct targets of discrimination constitute judicially cognizable injuries. *Id.* Accordingly, Mr. Smith has alleged direct personal injury sufficient to satisfy the requirements of standing inasmuch as he has been personally denied equal treatment by the challenged discriminatory conduct.

III. ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Petitioners assert that the decision of the United States Court of Appeals for the Sixth Circuit in this case is at odds with the holdings of this Court in *Allen v. Wright*, 104 S. Ct. 3315 (1984), *Heckler v. Mathews*, 104 S. Ct. 1387 (1984), and *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982). Petitioners mistakenly read these cases, all of which pertain to challenges of national executive policy, as limiting standing in housing discrimination cases to those individuals who have themselves been prevented from obtaining housing as the result of the challenged practices. Petitioners particularly rely on language in these cases pertaining to the directness of the injury necessary to satisfy standing prerequisites, and argue that because Mr. Smith was not actually steered away from purchasing a house in Cleveland Heights, he has no standing to challenge the City's racially discriminatory housing practices. Mr. Smith contends that Petitioners' argument is without merit because it fails to take into account the two decisions of this Court that are most

analogous to the instant case, and also because it rests on a fundamental misapprehension of the nature of his injury.

A. Petitioners Fail to Demonstrate Special and Important Reasons Why a Writ of Certiorari Should Issue

Rule 17 of the Supreme Court Rules indicates that a Writ of Certiorari "will be granted *only when there are special and important reasons therefore.*" (Emphasis supplied). These reasons include resolution of a conflict between the federal courts of appeals, resolution of a conflict between the court of appeals and a state court of last resort, and correction of a decision which conflicts with applicable holdings of this Court. *Id.*

As is set forth more fully in the following sections, Petitioners have failed to demonstrate that issuance of a writ is appropriate here. Although Petitioners take exception to the Sixth Circuit's interpretation of the record in this case, this obviously is not a "special and important" reason that would warrant issuance of a writ by this Court.

Petitioners' attempts to manufacture a conflict between the decision of the court of appeals, and previous decisions of this Court, are likewise unavailing. None of the cited cases supports Petitioners' assertion that individuals lack standing to challenge discriminatory housing practices unless they are prevented from purchasing a home in a particular area as a result of the unlawful practices. This Court has long recognized within the context of housing discrimination that stigmatic injury is inflicted, not only on the individuals who are "blacklisted," but also on the residents of the specific commu-

nity in which blacklisting occurs. *See Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). The Sixth Circuit was mindful of these decisions, and correctly determined that Mr. Smith has standing to bring this action.

The opinion of the Sixth Circuit clearly reveals that the court considered, and correctly applied, this Court's recent standing decisions in *Allen v. Wright*, 104 S. Ct. 3315 (1984), and *Heckler v. Mathews*, 465 U.S. 728 (1984). Thus, it is apparent that issuance of a Writ of Certiorari is unwarranted inasmuch as the "special and important reasons" required under the Rules of this Court are entirely lacking.

B. Standing Requirements Under Article III

In enacting the Fair Housing Act, 42 U.S.C. §§3601-3632, Congress intended that standing "extend to the full limits of Article III." *Havens Realty Corporation v. Coleman*, 455 U.S. 363, 372 (1982) (*citing Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979)). To satisfy the Constitutional minima, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 104 S. Ct. 3315, 3325 (1984). Such injury need only be "distinct and palpable" to satisfy the requirement of standing doctrine. *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

The Court of Appeals for the Sixth Circuit considered the "core component" of constitutional standing enunciated in *Allen v. Wright*, and determined that Mr. Smith satisfied this requirement because (1) he has suffered a personal injury; (2) the injury is fairly traceable to the Peti-

tioners' challenged conduct; and (3) the injury is likely to be redressed by the judicial relief sought. *Smith v. City of Cleveland Heights*, 760 F.2d 720 (6th Cir. 1985). The court found that Mr. Smith alleged distinct and palpable injury resulting from Petitioners' racially discriminatory housing practices, which practices imposed a stigma of undesirabilty upon all blacks residing in CH. As the Sixth Circuit observed, Petitioners' policies say to Mr. Smith that although his presence may be tolerable, the City wants no more of his race to enter as homeowners. *Id.* at 722. The court correctly determined that such policies, perpetrated by Mr. Smith's local government, personally and directly injure him. Moreover, since this injury stems directly from the housing practices, publicly adopted by Petitioners, Mr. Smith's injury is "fairly traceable" to the alleged unlawful acts and is likely to be redressed if the requested injunctive relief is granted.

C. Respondent Has Alleged "Personal Injury" Sufficient to Satisfy the Standing Requirements of Article III

Petitioners primarily challenge the Sixth Circuit's conclusion that Mr. Smith has alleged "personal injury" sufficient to satisfy the Constitutional minima for standing. According to Petitioners, even if the City has enacted racially discriminatory housing policies, Mr. Smith, a member of the race against which CH has discriminated and a resident of the City, has suffered no personal injury because he purchased his home prior to the adoption of the challenged housing practices, and because he lives on an integrated street. However, their assertion is premised on a reading of *Allen v. Wright*, 104 S. Ct. 3315 (1984), that is at odds with this Court's leading standing decisions in the context of housing discrimination actions.

In *Allen*, suit was brought by the parents of black children who attended public school, against the Secretary of the Treasury and the Commissioner of the Internal Revenue Service, on the ground that the defendants had not been sufficiently vigilant in enforcing an IRS policy denying tax-exempt status to racially discriminatory private schools. The *Allen* Court found that the chain of causation between the challenged conduct and the injury to the plaintiffs was too attenuated to satisfy the requirements of standing. Justice O'Connor reasoned that recognition of the "abstract" stigmatic injury asserted by the plaintiffs would result in opening the federal courts to suits by parties with no direct relationship to the alleged action: "[a] black person in Hawaii could challenge the grant of a tax exemption to a racially discriminatory school in Maine." *Id.* at 3327. The Court held that the plaintiffs' asserted stigmatic injury could be sufficient for standing purposes only if their alleged injury "independently meets the causation requirements of standing doctrine." *Id.* at n.22.

Petitioners' efforts to bring this case into conflict with *Allen* are predicated on a failure to recognize that the *Allen* plaintiffs alleged two injuries to support standing: (1) that they were injured because the government provided financial aid to discriminatory private schools; and (2) that plaintiffs' children were being denied the opportunity to receive an education in a racially integrated school. The Court determined that the first alleged injury was not a personal injury because plaintiffs did not allege that the challenged conduct was either directed at them or affected the quality of their daily lives. In other words, plaintiffs did not assert a personal interest which was affected by the government's challenged conduct.

The Court determined that the second injury alleged, that plaintiffs' children were being denied the opportunity to receive an education in a racially integrated school, was a "concrete personal injury that can support standing." 104 S. Ct. at 3327. The Court then analyzed the causal relationship between the plaintiffs' asserted interest and the challenged conduct and determined that (1) plaintiffs' injury resulted from the independent acts of third parties not before the Court (private schools engaging in discrimination); (2) there was no evidence of how many racially discriminatory private schools were receiving tax exemptions; (3) there was no evidence that the denial of the tax exemption would lead to a change in school policies; and (4) there was no evidence that parents would transfer their children to public schools as a result of any changes in educational or financial policies. Based on this analysis of the causal connection between the personal injury alleged and the challenged conduct, the Court determined that plaintiffs' injury was too abstract and speculative to establish a denial of equal treatment.

Unlike *Allen*, the discrimination that is occurring in this case does not involve third parties, but is directly attributable to Petitioners. Moreover, Mr. Smith's interest in not being stigmatized as an inferior citizen or denied and threatened with denial of important social and professional relationships with other blacks and whites, freely chosen, is directly related to Petitioners' endeavors to maintain the City's current racial composition.

Not only does Petitioners' attempt to manufacture a conflict between *Allen* and this case fail because Petitioners have mischaracterized the reasoning of this Court in *Allen*, but, perhaps more obviously, it fails because it totally ignores this Court's pronouncements in *Trafficante v. Met-*

ropolitan Life Insurance Company, 409 U.S. 205 (1972) and *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1974), which directly address the standing issue raised in this case. Both *Trafficante* and *Gladstone* recognize stigmatic injury as a personal injury sufficient to confer standing, even though the plaintiffs' injuries in those cases were not the result of discrimination *directed* at them. Acceptance of Petitioners' interpretation of *Allen* would require the overruling of both *Trafficante* and *Gladstone*, even though the *Allen* Court cited *Trafficante* with favor.

In *Trafficante*, two residents of an apartment complex, one black and one white, filed suit alleging that the landlord was engaged in discriminatory housing practices. They alleged, as did Mr. Smith in this case, that they had been deprived of the business and professional advantages of living in an integrated community, and that they had been stigmatized by living in a community whose racial composition had been manipulated by the landlord to exclude blacks. 409 U.S. at 208. The Court reversed the decisions of the district court and the court of appeals, and held that the plaintiffs had standing to challenge these practices, *notwithstanding the fact that the plaintiffs had not themselves been steered or discriminated against with regard to housing.* Justice Douglas observed that the legislative history of the Fair Housing Act indicates a concern "that those who were not the direct objects of discrimination had an interest in insuring fair housing, as they too suffered." *Id.* at 210 (footnote omitted). Thus, Petitioners' reading of *Allen* is in direct conflict with the decision of this Court in *Trafficante*.

Similarly, the Court held in *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), that individual residents of the Village of Bellwood had standing to bring an action against various real estate agents because of

alleged discriminatory housing practices, even though the plaintiffs *"admittedly had not been steered away from any homes they might have wished to purchase."* *Id.* at 97 (emphasis added). If the argument advanced by the Petitioners had prevailed in *Gladstone,* the plaintiffs would have been denied standing to challenge the discriminatory steering practices since they, like Mr. Smith in this case, were not steered away from purchasing any homes, and because they resided in an integrated neighborhood. Instead, the Court recognized that the residents of the neighborhood wherein the alleged racial steering had occurred had standing to challenge the discriminatory housing practices. *Id.* at 114-15.

The only difference between the decisions in *Trafficante* and *Gladstone* and this case is that here, the discriminatory housing practices were instituted by the local government rather than by private individuals—real estate agents or private landlords. However, this distinction highlights, rather than undermines, the gravity of Respondent's injury, the personal nature of the injury, and the traceability of the injury directly to the Petitioners' conduct. In addition to being forced to live in a community whose racial composition is overtly manipulated by the Petitioners, Mr. Smith must endure the City's express denigration of his race through a policy that solicits whites and discourages blacks from entering CH as homeowners. Obviously, the black plaintiff in *Trafficante,* like Mr. Smith, was not excluded from the apartment complex; yet he was directly and deeply affected by the landlord's decision not to allow *too many blacks* to live within the complex. *See* 409 U.S. at 208. The plaintiff in *Trafficante,* like Mr. Smith, suffered stigmatic injury and was denied the benefits of social and professional relations with other blacks.

Finally, in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), this Court recognized that the denial of "important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from *living in* integrated communities *free from discriminatory housing practices*," constitutes personal injury where there is proximity between the area in which plaintiff lives and the alleged steering practices. *Id.* at 376-377. In this case, there is no dispute that Mr. Smith lives in CH and that the alleged discriminatory conduct is city-wide.

D. The Decision of the Court of Appeals Does Not Conflict With Heckler v. Mathews, Nor Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.

Petitioners also rely on *Heckler v. Mathews*, 465 U.S. 728 (1984), and *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982), as support for their argument that Smith lacks standing to challenge the discriminatory housing practices of Petitioners. Essentially, Petitioners attempt to make the same argument with regard to *Heckler* and *Valley Forge Christian College*, as they have made with regard to *Allen v. Wright*: because each of these cases contains language requiring Plaintiffs to demonstrate that they personally have suffered some actual or threatened injury, Mr. Smith, who was not himself steered away from Cleveland Heights, does not have standing to bring this action. However, Petitioners misread *Heckler* and *Valley Forge Christian College* in much the same manner that they misconstrue *Allen*.

Contrary to Petitioners' argument, in *Heckler v. Mathews,* 465 U.S. 728 (1984), the Court held that the plaintiff *had standing* to challenge a discriminatory policy promulgated by the Department of Health and Human Services even though he would derive no personal benefit if the challenged clause were stricken. The Court stated:

> Rather, as we have repeatedly emphasized, discrimination itself, by perpetuating "archaic and stereotypic notions" or by stigmatizing members of the disfavored group as "innately inferior" and therefore as less worthy participants in the political community, *can cause serious non-economic injuries to these persons who are personally denied equal treatment solely because of their membership in a disfavored group.* 465 U.S. at 1395 (citations deleted) (emphasis added).

The *Heckler* decision supports the Sixth Circuit's decision, rather than undermines it, because it holds that the stigmatization of members of disfavored groups as innately inferior causes serious non-economic injuries to those persons denied equal treatment because of their membership in a disfavored group. In the case at bar, the Sixth Circuit determined that Mr. Smith, as a member of the class disfavored by Petitioners, has standing because he is personally denied equal treatment as a member of a class of persons that is disfavored, and therefore treated unequally, by the City in which he lives.

Similarly, *Valley Forge Christian College v. Americans United for Separation of Church and State,* 454 U.S. 464 (1982), is consistent with the decision of the Sixth Circuit in this case. In *Valley Forge Christian College,* the plaintiff, a taxpayers' organization, alleged that the transfer of

surplus property by the Secretary of Health, Education and Welfare to a non-profit educational institution operating under the supervision of a religious order deprived its members of "the fair and constitutional use of [their] tax dollar" in violation of their rights under the First Amendment. *Id.* at 476. The majority of the Court held that the plaintiff was without standing as taxpayers because the source of its Complaint was not a congressional act and it was not an exercise of the taxing and spending clause. The Court further held that plaintiff's general challenge to government action, as violative of the law, did not allege personal injury because the plaintiff did not identify any personal injury suffered as a consequence of the challenged conduct "other than the psychological consequence presumably produced by observation of conduct with which one disagrees." *Id.* at 485.

In the instant case, Mr. Smith has alleged far more than psychological discomfort attendant to the observation of conduct with which he disagrees. As the Sixth Circuit aptly observed, Mr. Smith is burdened with "a badge or label of inferiority" imposed on him purely on the basis of his race. *Smith v. City of Cleveland Heights,* 760 F.2d 722. His interest is a very personal one that far exceeds the interest of a concerned bystander: "[h]e lives out daily routines and neighborhood interactions as a member of a race which his own City labels as undesirable for purposes of housing policy." *Id.* Thus, unlike the plaintiff in *Valley Forge Christian College* who failed to allege "an injury of any kind," 454 U.S. at 486, Smith has properly alleged the sort of non-economic stigmatic injury long recognized by this Court as being judicially cognizable. *Heckler v. Mathews,* 465 U.S. 728 (1984).

Thus, neither *Heckler v. Mathews,* nor *Valley Forge Christian College v. Americans United for Separation of*

Church and State, Inc., supports Petitioners' assertion that the Sixth Circuit erred in determining that Mr. Smith has standing to bring this action.

E. Respondent's Personal Injury Is Directly Traceable to Petitioners' Unlawful Conduct

Petitioners halfheartedly assert that even if Mr. Smith has suffered stigmatic injury owing to Petitioners' racially discriminatory housing practices, such injury is not "fairly traceable" to the Petitioners' actions, and hence the injunctive relief sought would not redress that injury. The only basis for Petitioners' assertions is that "the record in this case contains no evidence that would support either conclusion." Brief of Petitioners at 19.

Even assuming for purposes of argument that Petitioners' disagreement with the Sixth Circuit's interpretation of the record is a proper ground for issuance of a Writ of Certiorari by this Court, Petitioners' argument is preposterous. Respondent's injury is neither abstract nor speculative: the source of his injury is specific government policies and programs implemented by Petitioners to manipulate the racial composition of CH. The causal connection between Respondent's injuries and the alleged unlawful conduct is direct and concrete.

That CH's comprehensive housing programs and policies deny equal treatment solely on the basis of race is obvious. City Manager Robinson and City Commissioner Mattes admitted in disposition that whites are preferred and openly solicited by Petitioners whereas blacks are encouraged to find housing outside of CH. Petitioners also admitted that their purpose is to maintain the current racial composition of CH by contracting to require

real estate brokers and agents to sell housing to whites in CH, and to sell to blacks outside of CH. CH also admits that it directs its advertising to attract whites, especially young white families, but not blacks.

There can be no doubt that Respondent is stigmatized as an inferior citizen and is threatened and denied social, professional and political benefits of associating with other blacks who would otherwise choose to live in CH. Petitioners' conduct and their admitted intent to attract whites but not blacks to CH, informs Mr. Smith that there are now enough blacks in CH and that a higher percentage of blacks is undesirable.

The Court should note that Petitioners do not even attempt to deny that their housing programs and policies are discriminatory. Instead, Petitioners ask the Court to focus on Respondent without any consideration of the challenged unlawful conduct.[4] As the Court in *Allen* recognized, the injury alleged must be considered in light of the challenged conduct. In this case, it is simply ludicrous to assert that black residents of CH, including the Respondent, whose government prefers to attract white residents based solely on race, are not harmed by this express policy declaring blacks as less-preferred residents.

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4. Contrary to Petitioners' argument that the Court should not consider the admissions and other evidence which demonstrate that CH's housing programs are race-conscious, this Court's decision in *Allen* requires consideration of the challenged conduct. Respondent's testimony must be considered in conjunction with the evidence of discriminatory conduct for three reasons: (1) the evidence establishes Respondent's denial of equal treatment as compared to the white residents of CH; (2) the evidence establishes the causal connection between the Respondent's injury and the challenged conduct; and (3) the evidence establishes that the relief requested will erase the source of Respondent's injury.

Finally, in contrast to *Allen*, the discriminatory conduct challenged in this case does not involve third parties whose independent conduct may not be affected by the relief requested. Instead, the challenged conduct is directly attributable to the Petitioners. As admitted by City Manager Robinson, the situs of the challenged conduct is the very community in which Respondent lives, and is not limited to a specific neighborhood in CH.

F. Respondent's Personal Injury Is Likely to Be Redressed by the Requested Relief

Respondent seeks declaratory and injunctive relief to prohibit Petitioners from implementing housing programs and policies on a race-conscious basis. The declaratory and injunctive relief sought by Respondent will invalidate the facially infirm ordinances of the City which openly declare blacks to be less preferable residents of the community, will put an end to all of Petitioners' practices and policies designed to manipulate the racial makeup of CH and will close the Heights Housing Service, at least to the extent it presently exists in violation of federal law. As such, the requested relief will not only erase the source of Respondent's stigmatic injury but will also allow the City's racial composition to develop as freely chosen by its citizens without discriminatory governmental interference.

IV. CONCLUSION

Respondent requests this Honorable Court to deny the Petition for a Writ of Certiorari because Petitioners have not identified any special and important reasons why a Writ should issue. The court of appeals correctly applied this Court's standing decisions, including *Allen v. Wright, Heckler v. Mathews* and *Valley Forge Christian College v. Americans for Separation of Church and State, Inc.*, as well as *Trafficante v. Metropolitan Life Insurance Company* and *Gladstone Realtors v. Village of Bellwood*, in finding that Respondent has standing to challenge Petitioners' unlawful discriminatory conduct.

Respectfully submitted,

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